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October 7, 2005

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1234; Regulation E ATM Disclosures

Dear Ms. Johnson,

The Credit Union National Association (CUNA) is pleased to respond to the Federal Reserve Board's request for comments on its proposal amending Regulation E to permit ATM operators to state that a fee "may" be imposed rather than "will" be imposed if there are circumstances under which some consumers would not be charged for services.

This letter was prepared under the auspices of CUNA's Payment Systems Subcommittee, which is chaired by Ralph Jones, Executive Vice President of the Georgia Credit Union Affiliates, Georgia. By way of background, CUNA is the largest credit union trade association, representing approximately 90% of our nation's nearly 8,900 state and federal credit unions, which serve nearly 87 million members.

Summary of CUNA's Position

- CUNA supports the Board's proposal to Regulation E and its commentary, as this change will clarify an ATM operator's fee structure particularly to credit unions as they tend to not charge for balance inquiries or transfers.
- CUNA agrees that both the Regulation and Official Staff Commentary should be amended since the Regulation currently states that a notice must state that a fee will be imposed when a fee is charged for any transaction.

Discussion of CUNA's Views

The Federal Reserve Board (Board) is considering revising its Regulation and Official Staff Commentary to permit ATM operators to state that a fee "may" be imposed rather than "will" be imposed if there are circumstances under which

some consumers would not be charged for services. CUNA supports the Board's proposed changes to Regulation E and its commentary, as this change will clarify an ATM operator's fee structure.

This notice is not intended to represent a complete disclosure to the consumer about fees, but gives consumers the ability to know immediately which ATMs generally charge a fee for use. We believe that in instances where a fee is charged for all transactions, the current notice stating that a fee "will" be charged adequately notifies consumers that they will be charged a fee. However, in instances in which fees are typically not charged, stating that a fee "may" be charged will give consumers the ability to find ATMs that do not charge for certain transactions. We believe that making a distinction between ATMs that charge fees for all transactions and those that only charge for certain transactions will better assist consumers in locating ATMs that may not charge a fee for transactions they may need, like balance inquiries or transfers.

The Board is seeking comment on current disclosure practices of ATM operators and circumstances in which fees are not imposed. Credit unions are unique in this instance in that they tend to provide balance inquiries and transfer ATM services without charging a fee. Currently, credit unions that impose fees disclose that a fee will be imposed, as the Regulation mandates. However, there are various circumstances in which credit unions will not charge ATM fees. Of the credit unions that responded to CUNA, all do not charge for balance inquiries or transfers. Other examples of transactions that do not impose a fee include those transactions from cards issued by FEMA, Red Cross, and other credit unions and/or networks in which a mutual agreement is entered. These are examples of how credit unions are unique in its fee structure and how the proposed changes to the ATM notice would provide consumers using credit union ATMs the information necessary to determine which ATMs would not charge for some transactions.

The Board previously issued proposed revisions to the Regulation E Staff Commentary on this issue. However, after reviewing comments it received, the Board believes it would be more appropriate to make this clarification in the Regulation. We agree that the Regulation should be amended as well as the Official Staff Commentary. Currently, section 205.16 states that an ATM operator must post a notice "that a fee *will* be imposed for providing electronic fund transfer services or a balance inquiry" in a prominent and conspicuous location on or at the ATM that imposes a fee for an EFT or balance inquiry (emphasis added). Only amending the Official Staff Commentary would not provide sufficient authority to permit ATM operators the ability to disclose that a fee may be imposed.

Conclusion

CUNA supports the Board's proposal clarifying that ATM operators can satisfy the requirement by providing a notice that a fee "may" be imposed instead of "will" be imposed if there are circumstances under which some consumers would not be charged. This is especially beneficial to credit unions that do not charge for balance inquiries, transfers or transactions from cards issued by specific networks or other credit unions. If you have any questions, please contact me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilly Thomas", with a stylized, cursive script.

Lilly Thomas